



[6450-01-P]

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CR-005]

Decision and Order Granting a Waiver to Felix Storch, Inc. (FSI) from the Department of Energy Commercial Refrigerator, Freezer and Refrigerator-Freezer Test Procedures

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of the decision and order (Case No. CR-005) that grants Felix Storch, Inc. (FSI) a waiver from the DOE test procedures for determining the energy consumption of its commercial ice cream freezers for the basic models set forth in its petition for waiver (petition). FSI claims in its petition that the specified basic models cannot be tested in accordance with the DOE test procedure for commercial ice cream freezer equipment because the equipment cannot operate at the integrated average product temperature of $-15 \pm 2^{\circ}\text{F}$, specified in DOE's test procedures. Under today's decision and order, FSI shall be required to test and rate the commercial ice cream freezers specified in the petition at the lowest integrated average temperature of $-8 \pm 2^{\circ}\text{F}$, which DOE confirmed is the lowest temperature at

which those models can operate and which is consistent with the lowest application product temperature provision in the DOE test procedures.

DATES: This Decision and Order is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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SUPPLEMENTARY INFORMATION: DOE issues notice of this Decision and Order in accordance with Title 10 of the Code of Federal Regulations (10 CFR) 431.401(f)(4). In this Decision and Order, DOE grants FSI a waiver for the commercial ice cream refrigerators specified in its petition submitted on January 31, 2013. FSI must test and rate this equipment at the lowest integrated average temperature of $-8 \pm 2^{\circ}\text{F}$, which is consistent with the lowest application product temperature provision in the DOE test procedure at 10 CFR 431.64(b)(3)(A).

Today's decision requires FSI to make representations concerning the energy efficiency of this equipment consistent with the provisions and restrictions of the alternate test procedure in the Decision and Order below, and the representations must fairly disclose the test results. (42 U.S.C. 6314(d)) The same standard applies to distributors, retailers, and private labelers when making representations of the energy efficiency of this equipment.

Issued in Washington, DC, on November 25, 2013.

Kathleen B. Hogan,
Deputy Assistant Secretary for Energy Efficiency,
Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Felix Storch, Inc. (FSI) (Case No. CR-005).

I. *Background and Authority*

Title III, Part C of the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. 94-163 (42 U.S.C. 6311-6317), established the Energy Conservation Program for certain industrial equipment, which includes commercial refrigeration equipment, the focus of this notice.¹ Part C specifically includes definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers. (42 U.S.C. 6316) With respect to test procedures, Part C authorizes the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

Section 343(a)(6)(C) of EPCA directs DOE to develop test procedures to establish the appropriate rating temperatures for products for which standards will be established under section 343(a)(6), including (1) ice-cream freezers; (2) commercial refrigerators, freezers, and refrigerator-freezers with a self-contained condensing unit without doors; and (3) commercial refrigerators, freezers, and refrigerator-freezers with a remote condensing unit. Other provisions of section 343(a)(6) provide DOE with additional

¹ For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A-1.

authority to establish and amend test procedures for commercial refrigeration equipment. (42 U.S.C. 6314(a)(6)(C)) On December 8, 2006, DOE published a final rule adopting test procedures for commercial refrigeration equipment. 71 FR 71340. Title 10 of the Code of Federal Regulations (10 CFR) 431.64 directs manufacturers of commercial refrigerators, freezers and refrigerator-freezers to use certain sections of Air-Conditioning and Refrigeration Institute (ARI) Standard 1200–2006, “Performance Rating of Commercial Refrigerated Display Merchandisers and Storage Cabinets” when measuring the energy consumption of this equipment. On January 9, 2009, DOE established energy conservation standards for certain classes of commercial refrigerators, effective January 1, 2012, and provided that the test procedures at 10 CFR 431.64 apply to that equipment. 74 FR 1092. The basic models included in FSI’s petition are subject to the applicable standards established in that rulemaking and are therefore required to be tested and rated according to the prescribed DOE test procedure as of January 1, 2012.

DOE’s regulations for covered products and equipment permit a person to seek a waiver from the test procedure requirements for covered commercial equipment if at least one of the following conditions is met: (1) the petitioner’s basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures; or (2) the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 431.401(b)(1)(iii). The

Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(4). Waivers remain in effect according to the provisions of 10 CFR 431.401(g).

II. *FSI's Petition for Waiver: Assertions and Determinations*

In its January 31, 2013 petition, FSI sought a waiver from the DOE test procedures applicable to commercial refrigerators, freezers and refrigerator-freezers set forth in 10 CFR 431.64, as well as an application for interim waiver. FSI requested the waiver for certain basic models of its commercial ice cream freezers. This equipment is classified as a commercial ice cream freezer (category (vii)) in the table listing some of the applicable test procedure requirements at 10 CFR 431.64(b)(3)). The applicable test procedure for this equipment is specified in 10 CFR 431.64(b), which incorporates by reference ARI Standard 1200-2006, section 3, “Definitions,” section 4, “Test Requirements,” section 7, “Symbols and Subscripts,” and, section 5, “Rating Requirements for Remote Commercial Refrigerated Display Merchandisers and Storage Cabinets.”

FSI sought a waiver from the applicable test procedure under 10 CFR 431.64 on the grounds that its commercial ice cream freezers contain design characteristics that prevent testing according to the current DOE test procedure. Specifically, FSI asserts that particular basic models of commercial ice cream freezers are not able to operate at

the specified integrated average temperature of $-15^{\circ}\text{F} \pm 2^{\circ}\text{F}$, which is required for testing and rating purposes. Instead, FSI asserts that the equipment can only operate from 0°F to -5°F . Consequently, FSI requested that DOE grant a waiver from the applicable test procedure, allowing the specified products to be tested at an integrated average temperature of 0°F , which FSI asserts is an acceptable temperature at which to test the specified basic models. FSI further asserts that these basic models of commercial ice cream freezers are designed to maintain the frozen state of an already frozen product, not to lower the temperature of non-frozen products to the 0°F to -5°F operating temperature.

In addition, FSI asserts that the commercial ice cream freezers subject to the petition also have significantly greater volumes per unit of total display area (TDA) than do other commercial freezers of a similar type and function. FSI believes the current method of measurement of TDA in the DOE test procedure does not provide a fair and accurate representation of the display area and, therefore, the energy use of its products. FSI is requesting an adjustment or allowance for the measurement of TDA.

The Department articulated its position regarding basic models of commercial refrigeration equipment that are not capable of operating at the required integrated average temperature specified by the DOE test procedure in a test procedure final rule published on February 21, 2012. 77 FR 10292. Specifically, to qualify to use the lowest application product temperature for a certain piece of equipment, a manufacturer should be confident that any case tested under that provision could achieve the specified lowest

application product temperature within ± 2 °F and could not be tested at the rating temperature (i.e., integrated average temperature specified by the DOE test procedure) for the given equipment class. Further, in the final rule, DOE clarified that, for many pieces of equipment, the lowest application product temperature that should be used for testing will be the lowest temperature setting on the unit's thermostat. 77 FR 10292, 10303 (Feb. 21, 2012).

DOE agrees with FSI's assertion that the basic models identified in its petition cannot be operated at the associated rating conditions currently specified for commercial ice cream freezers in the DOE test procedures given the available data. However, when the temperature knob is set to the coldest setting as described in the February 2012 final rule, DOE has confirmed that the corresponding integrated average temperature achieved during operation by these basic models is approximately -8°F. In light of this fact and DOE's position in the February 2012 final rule, DOE has concluded that FSI's request to test these basic models of commercial ice cream freezers at an integrated average temperature of 0°F is inappropriate. Instead, DOE has determined that the basic models of commercial ice cream freezers listed in FSI's petition should be tested at their lowest application product temperature as defined at 10 CFR 431.62, which corresponds to an integrated average temperature of -8 ± 2 °F.

DOE rejects FSI's request regarding the use of an alternative calculation and use an adjustment to the TDA metric to characterize the display area of the commercial ice cream freezer. During the previous rulemaking considering energy conservation

standards for commercial refrigeration equipment, TDA was chosen as the display metric because DOE found through its own investigation and research and after receiving public comment on the issue that it is most representative of the heat loads that define the performance of transparent-door equipment – namely radiation and conduction through glass doors. 74 FR 1092 (Jan. 9, 2009). Additionally, since commercial ice cream freezers are used for merchandising in the retail environment, “face area” (or area of visible product), which is analogous to TDA, is often used by retailers as the metric of equipment capacity. In the ongoing rulemaking it was reconfirmed that TDA should be the metric of choice. Consequently, DOE does not believe that the commercial ice cream freezers described in the petition contain design characteristics that make the methods of determination and the TDA metric unrepresentative and is denying this portion of the petition.

DOE received three comments following publication of FSI’s notice of petition for waiver, notice granting interim waiver, and request for comments. 78 FR 26006 (May 3, 2013) One comment from FSI stated that the company disagrees with DOE’s requirement that testing be conducted at an integrated average temperature of -8 ± 2 °F, as well as the use of total display area (TDA). Instead, FSI requested the use of an integrated average temperature of -5 ± 2 °F and an adjustment factor to accommodate for the extra volume not considered by DOE’s TDA-based procedures. The two other comments DOE received were from Elcold Fryserne Hobro ApS and Vestfrost Solutions, manufacturers that build the freezers described in FSI’s petition. Both of these commenters stated that the freezers should be tested at an average operating temperature

of 0 °F and that testing at -8 °F, as specified in the interim waiver, would cause the compressor to not cycle and would not be representative of typical use. Further, the commenters objected to the fact that DOE's conclusion was based on only one test by a contracting laboratory.

As stated in the notice granting FSI an interim waiver (May 3, 2013, 78 FR 26006), DOE agrees with FSI's assertion that the basic models identified in its petition cannot be operated at the associated rating conditions currently specified for commercial ice cream freezers in the DOE test procedures given the available data. However, when the temperature knob is set to the coldest setting as described in the February 2012 final rule, DOE has confirmed that the corresponding integrated average temperature achieved during operation by these basic models is approximately -8°F. In light of this fact and DOE's position in the February 2012 final rule, DOE has concluded that FSI's request to test these basic models of commercial ice cream freezers at an integrated average temperature of 0°F or -5°F is inappropriate. FSI has not provided any information (i.e., test data) showing that -5°F (or 0°F) is the coldest temperature at which its equipment can operate. On the other hand, DOE test data demonstrate that the minimum operating temperature of the equipment is -8°F. Neither FSI nor other commenters have claimed that DOE tested defective units or that FSI has modified its control strategy. Absent any other information, DOE must rely on the data that it has obtained through testing of units. Therefore, DOE has determined that the basic models of commercial ice cream freezers listed in FSI's petition should be tested at their lowest application product temperature as defined at 10 CFR 431.62, which corresponds to an integrated average temperature of -8

± 2 °F.

DOE rejects FSI's request regarding the use of an alternative calculation and use of an adjustment to the TDA metric to characterize the display area of the commercial ice cream freezer. During the previous rulemaking considering energy conservation standards for commercial refrigeration equipment, TDA was chosen as the display metric because DOE found, through its own investigation and research and after receiving public comment on the issue, that it is most representative of the heat loads that define the performance of transparent-door equipment – namely radiation and conduction through glass doors. 74 FR 1092 (Jan. 9, 2009). Additionally, since commercial ice cream freezers are used for merchandising in the retail environment, “face area” (or area of visible product), which is analogous to TDA, is often used by retailers as the metric of equipment capacity. In the ongoing rulemaking, DOE has reconfirmed TDA as the metric of choice for commercial refrigeration equipment. 78 FR 55890 (Sept. 11, 2013). Consequently, DOE is not swayed by FSI's argument and does not believe that the commercial ice cream freezers described in the petition contain design characteristics that make the methods of determination and the TDA metric unrepresentative, and is denying this portion of the petition.

III. *Conclusion*

After careful consideration of all the material that was submitted by FSI and the additional comments received, it is ordered that:

(1) The petition for waiver submitted by the FSI (Case No. CR-005) is hereby granted as set forth in paragraphs (2), (3), (4) and (5).

(2) FSI shall be required to test and rate the following basic models according to the alternate test procedure set forth in paragraph (3) of this section.

SCF694, SCF695S, SCF1094, SCF1095S, SCF1494, SCF1495S, SCF1694, SCF1695S, SCF1894, SCF1895S, SCF630, SCF940, SCF1310, SF1710

(3) Alternate Test Procedure. FSI shall test the equipment listed in paragraph (2) according to the DOE test procedure set forth in 10 CFR 431.64, except that instead of testing at $-15^{\circ}\text{F} \pm 2^{\circ}\text{F}$ (as set forth in the table at 10 CFR 431.64(b)(3)), DOE requires FSI to test the commercial ice cream freezers specified in its January 31, 2013 petition and listed above according to the test procedure specified at 10 CFR 431.64, FSI shall test the specified basic models at an integrated average temperature of $-8 \pm 2^{\circ}\text{F}$, which DOE has determined is the lowest temperature at which those models can operate.

DOE notes that it has published an amended test procedure for commercial refrigeration equipment. (77 FR 10292, Feb. 21, 2012). The amended test procedure addresses the testing issue addressed in this waiver, requiring products to be tested at their lowest application product temperature. *Id.* Use of the amended test procedure will be required on the compliance date of any amended standards for this equipment.

(4) Representations. In making representations about the energy efficiency of its

commercial ice cream freezers listed in paragraph (2), for compliance, marketing, or other purposes, FSI must fairly disclose the results of testing under the alternate test procedure specified in this waiver.

(5) This waiver amendment shall remain in effect from the date this Decision and Order is issued, consistent with the provisions of 10 CFR 431.401(g). DOE notes that it has published an amended test procedure for commercial refrigeration equipment. (77 FR 10292, Feb. 21, 2012). The amended test procedure addresses the testing issue addressed in this waiver, requiring products to be tested at their lowest application product temperature. *Id.* Use of the amended test procedure will be required on the compliance date of any amended standards for this equipment.

(6) This waiver is granted for only those models specifically set out in FSI's petition, not future models that may be manufactured by FSI. FSI may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional models for which it seeks a waiver from the DOE test procedure. Grant of this waiver also does not release FSI from the certification requirements set forth at 10 CFR part 431.

(7) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

Issued in Washington, DC, on November 25, 2013.

Kathleen B. Hogan
Deputy Assistant Secretary for Energy Efficiency
Energy Efficiency and Renewable Energy

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